

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr. M.P. No. 142 of 2014**

Amit Kumar Sharma, S/o Shri Jitendra Sharma, Aged about 35 years,
Occupation – Advocate, R/o Tiwari Chal (the House of Shri Varun Tiwari),
Rajendra Nagar, Bilaspur, Police Station – Civil Line, Bilaspur, Tahsil &
Distt.- Bilaspur (C.G.)

----Petitioner/Accused

Versus

Avinash Kashyap, S/o Shri Badri Prasad Kashyap, Aged about -21 years,
R/o Kapil Nagar, Sarkanda, Police Station – Sarkanda, Tahsil & Distt.-
Bilaspur (C.G.)

---- Respondent

For Petitioner	: Shri Prakash Tiwari & Shri R.R. Soni, Advocate.
For Respondent	: None present, though served.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board**

10/04/2019

(1) The respondent/complainant filed complaint under Section 200 of the Code of Criminal Procedure (for short "Cr.P.C.") against the petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (henceforth "NI Act, 1881") on 13.03.2013. The learned Magistrate taken cognizance on the complaint and issued process to the petitioner by order dated 17.04.2013, against which the instant petition under Section 482 of the Cr.P.C. has been preferred.

(2) Reply has been filed by the respondent stating that against the order taking cognizance against the petitioner dated 17.04.2013, the petitioner has filed revision before the revisional Court on 25.10.2013, which was dismissed by the revisional Court on 04.01.2014 and in absence of challenge, it has attained finality and by suppressing

this fact, instant petition under Section 482 of the Cr.P.C. has been preferred by the petitioner.

(3) Learned counsel for the petitioner/accused would submit that no affidavit under Section 145 of the NI Act, 1881 was filed and witnesses were not examined and, therefore, cognizance could not have been taken against the petitioner as the affidavit has been filed subsequently. He has also argued the matter on merits to demonstrate that no offence under Section 138 of the NI Act, 1881 is made out against the petitioner. He placed reliance upon the judgment of the Supreme Court in the matter of **Raj Kumar Khurana Vs. State of (NCT of Delhi) and another**¹ and judgment of this Court in the matter of **Raj Kumar Singhania Vs. Ashok Jain**² to buttress his submissions.

(4) None present for the respondent despite service of notice.

(5) I have heard learned counsel appearing for the petitioner and considered his submissions and went through the record with utmost circumspection.

(6) It is admitted position on record that against the order taking cognizance dated 17.04.2013, the petitioner preferred revision before the revisional Court being Criminal Revision No. 252 of 2013, which was dismissed on 04.01.2014 holding that order dated 17.04.2013 and another order dated 07.10.2013 are in accordance with law but the petitioner did not assail these orders and even not disclosed this fact in the petition and straightway filed this petition under Section 482 of the Cr.P.C. Since, the petitioner has not challenged the order passed in revision, the order dated 17.04.2013 taking cognizance against the petitioner has become final. The petitioner ought to have disclosed this fact in the petition and could have challenged the revisional order in accordance with law, as such, the present Cr.M.P. as framed and filed is not

1 (2009) 6 SCC 72

2 2012 Cri. L. J. 2254

maintainable.

(7) Accordingly, the Cr.M.P. is dismissed as not maintainable leaving the parties to bear their own costs. However, the petitioner is at liberty to raise all the pleas, which are raised in this petition, before the trial Court, which is said to be on the advanced stage.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

